IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1868 OF 2005

1. Thane Municipal Corporation.
2. The Commissioner,
   Thane Municipal Corporation.
3. Sahebaraoi Marathi, Personnel Officer,
   Thane Municipal Corporatilon.
4. Manish Joshi, Establishment In-charge,
   Thane Municipal Corporation. ... Petitioners.

Versus.

1. Smt.Rajsghree Shitalkumar Kadam.
2. State of Maharashtra. ... Respondents.

Shri R.S.Apte for the Petitioners.
Shri Deshpande for the Respondent No.1.
Ms.S.A.Shinde, A.P.P.for the Respondent No.2-State.

CORAM : ABHAY S. OKA, J.
DATED : 12th August, 2005.

P.C.:

1. Rule. The learned Counsel for the Respondent No.1 and the learned A.P.P. waive service. Taken up for hearing forthwith by consent of the parties.

2. The challenge in this petition under Article 227 of the Constitution of India is to the orders dated 21st July 2005 passed by the Third Labour Court, Thane, by which the Applications at Exhibits 16, 17 and 18 made by the Petitioners Nos.2 to 4 were rejected. The challenge is also to the order passed on the same day on the Applications at Exhibits 21, 22 and 23 made by the Petitioners Nos.2 to 4 for exemption from appearance.

3. The Respondent No.1 made an application under section 48 of the Maharashtra Recognition of Trade

Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the said Act of 1971") before the Labour Court at Thane. The grievance of the Respondent No.1 in the said Application is relating to the failure of the Petitioners to implement order dated 12th August 2004 passed by the learned Member of the Industrial Court, Thane. On the said application under section 48(1), an order was passed by the learned Judge of the Labour Court directing that summons be issued to the present Petitioners returnable on 11th July 2005. It appears that on 11th July 2005, the Petitioners Nos.2 to 4 did not appear before the learned Judge personally and they were represented by an Advocate. Separate applications were made by the Petitioners interalia praying for quashing and setting aside the order issuing process passed by the learned Judge of the Labour Court. On the same day, an Application made by the Respondent No.1 pointing out that the Petitioners were absent. The learned Judge issued bailable warrants against the Petitioners Nos.2 to 4 by order dated 21st July 2005 on the ground that inspite of service of summons, the said Petitioners were absent. On 21st July 2005, the Petitioners Nos.2 to 4 made separate applications at Exhs.22, 23 and 24 for grant of exemption from personal appearance for that day and till 28th July 2005. The said applications came to be rejected by the learned Judge by separate orders by observing that the concerned Petitioners have not executed personal bonds to secure

their presence and have not furnished their address. On the same day by a separate order, the learned Judge of the 3rd Labour Court rejected the applications for recalling the process made by the Petitioners.

4. Shri Apte appearing for the Petitioners submitted that the Petitioners were entitled to appear through their Advocate and their personal presence was not required. He submitted that the Petitioners were represented by their Advocate on the returnable date of the summons and therefore, the learned Judge committed an error by issuing warrants. He submitted that the application under section 48 made by the Respondent No.1 was not maintainable in law and therefore, order of issuing process was bad-in-law. He submitted that in reply to the application made by the Respondent No.1 on 11th July 2005 praying for issuing warrants, a prayer was made by the Advocate for the Petitioners for exemption. He submitted that without prejudice to the rights and contentions of the Petitioners, the Petitioners Nos.3 and 4 are willing to appear before the learned Judge of the Labour Court. He submitted that the Petitioners may be permitted to make applications for exemption and the same may be ordered to be considered in accordance with the law.

5. The learned Counsel for the Respondent No.1 submitted that the application for recalling the process

was not maintainable in law. He submitted that as the process was issued under section 202 of the Code of Criminal Procedure, 1973, the Petitioners were duty bound to appear in person before the Court as there was no exemption granted under section 205(1) of the said Code of 1973. He submitted that the remedy of approaching the Industrial Court by way of revision under section 44 is available to the Petitioners.

6. I have considered the submissions. In view of the settled position of law, the applications which were made by the Petitioners at Exhibits 16, 17 and 18 for recalling the order of process were not maintainable before the learned Judge. In paragraph 7 of the order dated 21st July 2005, the learned Judge observed that the applications were not maintainable. In my view, there is no merit in the challenge of the order dated 21st July 2005 passed below application at Exhibits 16, 17and 18. However, the Petitioners are free to challenge the said order of issuing process by filing appropriate proceedings.

7. The Petitioner No.2 is the Commissioner of Thane Municipal Corporation, which is Petitioner No.1. The Petitioners Nos.3 and 4 are the officers of the said Corporation. The Applications which were made for exemption on 21st July 2005 related to a limited period upto 28th July 2005. The Petitioners are entitled to

apply for exemption under section 205 read with section 317 of the said Code of 1973. The Petitioners Nos.3 and 4 have offered to remain present before the learned Judge personally. In my view, the Petitioners can be permitted apply for exemption from personal appearance and the said Applications deserve to be considered by the learned Judge on merits.

8. Hence the petition is disposed of by the following order:

(i) The Petitioners Nos.3 and 4 will appear personally before the learned Judge of the 3rd Labour Court, Thane, on 2nd September 2005 at 11.00 a.m. The Petitioners Nos.2 to 4 are free to apply for dispensing with personal attendance. If such applications are made by the Petitioners Nos.2 to 4 on that day, the learned Judge will exempt the Petitioner No.2 from personal appearance till the said application is heard and decided on merits.

(ii) If such applications are made on 2nd September 2005, the learned Judge will consider the said applications and will decide the same in accordance with law as expeditiously as possible and preferably

within a period of two weeks from that date.

(iii) If the Petitioners Nos.3 and 4 fail to appear before the Court on 2nd September 2005 and if the Petitioners Nos.2 to 4 fail to apply for exemption, on that day the learned Judge will be free to pass appropriate orders in accordance with the law.

(iv) The order dated 11th July 2005 issuing non-bailable warrant against the Petitioners Nos.2 to 4 is set aside.

(v) The Petitioners will be free to take out appropriate proceedings before the appropriate Court for challenging the order issuing process and all questions in that behalf are kept open.

(vi) The petition is disposed of in the above terms.

(vi) The parties and the concerned Court to act on an authenticated copy of this order.

Judge.